IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 83 of 2000

in

COMPANY PETITIONNo 286 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GSL (INDIA) LTD.

Versus

FORTIS FIANCIAL SERVICES LTD.

Appearance:

MR KS NANAVATI with MR AC GANDHI for Petitioner

MR PC KAVINA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 21/07/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Shri P.C. Kavina appearing for the respondent.

2. The applicant is a company against which a winding up petition has been filed. The winding up petition being Company Petition No. 286/99 was notified for hearing from time to time. Though the applicant company was served with a notice of this court in the winding up petition on 14.12.99, nobody had appeared for the company on 15.2.2000 and, therefore, the winding up petition was admitted on that day. So as to give one more opportunity to the applicant company, order with regard to advertisement was not passed on that day and the hearing was adjourned to 23.2.2000. Even onthat day nobody had appeared for the cmpany and therefore an order with regard to advertisement was passed and in pursuance of the said order, the advertisement was published in the Indian Express on 8.3.2000 and in Gujarat Mitra on 9.3.2000 with regard to admission of the said petition.

3. In the present application it has been submitted by Sr. Advocate Shri Nanavati appearing with learned advocate Shri A.C. Gandhi that the order dated 15.2.2000 with regard to admission of the petition be reviewed and recalled. It has been submitted that, though on behalf of the applicant company, learned advocate Shri A.C. Gandhi was engaged, on account of sickness of learned advocate Shri Gandhi, the Vakalatnama which was sent to him could not be filed in the court. It has been stated that the Vakalatnama was sent to the clerk of learned advocate Shri A.C. Gandhi but through oversight, the clerk could not file the Vakalatnama and learned advocate Shri Gandhi could not do necessary follow up work on account of his sickness. An affidavit has been filed in support of the said submission by Shri Rasik Raval, Clerk of learned advocate Shri A.C. Gandhi.

4. Learned advocate Shri Gandhi was present at the time when this matter was heard at an earlier occasion and he had made a statement with regard to his sickness, which has not been disputed by learned advocate Shri Kavina appearing for the respondent - the petitioning creditor.

5. It has been submitted by Sr. Advocate Shri Nanavati that for no fault of the applicant company, the applicant company will be facing the winding up proceedings because the company had done the needful for engaging a lawyer and had also sent its Vakalatnama to learned advocate Shri Gandhi as stated hereinabove.

Simply because the Vakalatnama was not filed, appearance of Shri Gandhi was not notified and the matter was admitted as there was no representation on the part of the applicant-company. In the circumstances, the orders dated 15.2.2000 and 23.2.2000 were passed.

6. He has submitted that after the review application was filed on 8.3.2000, for sake of abundant caution, the applicant company had filed an appeal, being O.J. Appeal No. 14 of 2000 on 27.3.2000. It has been submitted by him that at the time when the present review application was filed, no appeal was filed by the applicant company against the orders dated 15.2.2000 and 23.2.2000. It has been, therefore, submitted by Sr. Advocate Shri Nanavati that, in the interest of justice, the orders dated 15.2.2000 and 23.2.2000 be reviewed and recalled so that the applicant company can represent itself in the winding up petition, which is pending before the learned single Judge.

7. Learned advocate Shri Kavina appearing for the respondent - the petitioning creditor has submitted that advertisements in two newspapers have already been published as recorded hereinabove, and as the advertisements have already been published, this court should not interfere with the order with regard to the admission of the winding up petition. It has also been submitted by him that some of the petitions filed against the applicant company are pending since long and as the company is not having sufficient funds, the company is unable to pay its debts. The order with regard to admission of the petition dated 15.2.2000, therefore, need not be interfered with.

8. It has been submitted by Shri Kavina that there is no justifiable reason for setting aside the impugned orders and even if the court desires to set aside the said orders, as per the provisions of Order 9 Rule 13 of the CPC, the applicant company should be asked to pay costs and should also be directed to deposit the amount payable by the company to the respondent in this court.

9. He has thereafter submitted that there is also no justifiable reason for review of the orders because, according to the provisions of Order 47 Rule 1, an order can be reviewed only in certain circumstances. The circumstances stated in the said rule are not applicable in the instant case and, therefore, the orders need not be reviewed.

10. Learned Advocate Shri R.H. Mehta has also

appeared with learned advocate Shri Kavina and has stated that the company is running into losses and is unable to pay its debts to its creditors. Moreover, several petitions have been filed against the company which are pending before the learned Company Judge. It has been submitted by him that in the interest of justice, the orders dated 15.2.2000 and 23.2.2000 should not be reviewed.

11. I have heard the learned advocates and looking to the facts of the case, it is clearly established that the applicant company had forwarded its Vakalatnama to learned advocate Shri Gandhi but as Shri Gandhi was not keeping good health during the period when he had received the Vakalatnama, he could not attend the court and had forwarded the Vakalatnama to his clerk, who, through oversight, forgot to file the same and therefore name of Shri Gandhi could not be notified when the petition was heard from time to time and the applicant company could not be represented at the time when the company petition was heard for admission. Ultimately, as stated hereinabove, the petition was admitted and the order regrding advertisement was pased.

12. Looking to the facts of the case, it is clear that there is no fault on the part of the company and only on account of sickness of learned advocate Shri Gandhi, the company could not be represented before the court on 15th and 23rd February, 2000 when the company petition was heard by this court. It is not in dispute that learned advocate Shri Gandhi was not keeping good health and he was unable to attend the court during the said period and had also filed his sick-note.

13. In the circumstances, there is a prima facie case for recall of the orders dated 15.2.2000 and 23.2.2000 and in the interest of justice I hereby recall the said orders. The request of learned advocate Shri Kavina with regard to deposit of the amount payable by the company to the respondent with this court is not accepted for the reason that this court is concerned with a winding up petition and not a suit or proceedings in the nature of a suit for recovery of debt. Moreover, at this juncture, this court is not concerned with the company's financial position but is only concerned with the orders which were passed against the company in absence of its learned advocate Shri A.C. Gandhi. By way of costs, the applicant company shall pay a sum of Rs. 15,000/- to the respondent company on or before 31.8.2000 as it has been submitted by learned advocate Shri Kavina that the petitioning creditor has spent substantial amount while

getting the advertisements publshed.

14. This order shall operate only after a sum of Rs. 15,000/- is paid by way of costs to the respondent by the applicant company. Company Petition No. 286/99 shall be notified for hearing in due course after 31.8.2000.

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(A.R. Dave, J.)

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